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Department of the Interior
Minerals Management Service
381 Elden Street, Mail Stop 4024
Herndon, Virginia 20170-4817

Attention: Rules Processing Team

Re: RIN 1010-AD23, Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf -- Cost Recovery, 70 Fed. Reg. 15,246 (March 25, 2005) – Advanced Notice of Proposed Rulemaking

Dear Sir or Madam:

Chevron U.S.A. Inc. (Chevron) appreciates the opportunity to comment on the Minerals Management Service's (MMS) Federal Register notice proposing to develop regulations which impose new fees to cover MMS's costs of processing certain applications and permits. Chevron, as an owner of hundreds of leases located in federal waters of the Gulf of Mexico (GOM), and as a lessee with both producing and non-producing leases, is very interested in commenting on any proposed action that could increase its cost of doing business in the United States.

Advanced Proposed Notice of Rulemaking

Based on various legal authority and policy guidance documentation referenced in the Federal Register notice, MMS believes it is entitled to implement cost recovery procedures to reimburse the government for costs incurred when providing services to the non-federal sector. MMS's rationale for considering the imposition of this new fee structure on services MMS has historically preformed for no additional compensation appears to be based on its interpretation of the documents referenced in the notice. What is puzzling about the advanced notice of proposed rulemaking is that MMS is contemplating imposing fees on the handling of certain documents mandated by regulations that were created by MMS. While we do not dispute the text of the referenced laws and guidance documents mentioned in the notice, we question MMS's authority to charge fees to process mandatory applications and permits.

Holders of OCS leases have paid the United States government for the right to explore and develop the property covered by the leases. These payments are in the form of bonuses, annual rentals, and in some cases royalty. It is believed that the combination of these payments sufficiently compensates the United States government both for issuing the leases and for processing the necessary paperwork required by regulations to facilitate lessees bringing their leases to production. In fact, MMS insures it receives fair market value for the OCS leases through its two tier compensation sufficiency determination model, which guarantees that the U. S. government is fairly compensated for issuing and administering public mineral leases. Because this system assures that fair value is received for leases at the time of issuance, charging fees to lessees for processing mandated applications and permits after issuing the leases seems unreasonable.

In addition, we believe that imposing new fees on activities necessary to lessees' exploration and production activities on existing leases is unlawful because, by promulgating regulations requiring that these fees be paid, MMS is unilaterally imposing new contractual requirements on existing leases. However, "[w]hen the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals."[1] This means that, because federal leases are contracts, absent ambiguity or unlawfulness, the lease terms bind the government as well as the lessees and the terms cannot be altered, except through the mutual agreement of the government and the lessees. Thus, it is our opinion that, just as it cannot unilaterally amend the leases themselves, MMS cannot use regulations to unilaterally impose on existing leases new contractual duties in the form of fees that must be paid to conduct activities that are necessary to exercise the rights granted by the leases. Moreover, offshore leases by their terms expressly anticipate and preclude such contract amendment by regulation because the leases are to be subject only to "statutes and regulations already existing at the time of the contract . . . ."[2]

Further, even if MMS believes that it has the right to impose new fees on lessees to recover its purported document processing costs, if MMS actually goes forward with the proposed rulemaking, the rulemaking itself may violate the Administrative Procedure Act unless MMS discloses the basis used in determining the costs to be recovered. If the proposed rulemaking does not contain this information, it will not provide interested parties with notice sufficient to allow them to understand and comment on the method used to assess the costs which the new fees would purportedly be imposed to recover. Chevron also suggests that, to assure the reasonableness and market sensitivity of the costs to be recovered, the proposed rulemaking compare the costs sought to be recovered to the costs of similar services in the private sector.

MMS Questions

MMS has requested comments regarding the following questions which were listed in the referenced federal register notice:

1. Are there other actions for which MMS should require fees to recover costs from operators? (Answer: Chevron does not believe that MMS should impose the fees proposed, and additionally does not believe that there are other actions for which MMS should require fees to recover costs from operators. As stated above, MMS's current leasing system is structured to more than adequately cover the administrative costs associated with the leases it issues.)

2. MMS plans to calculate the fees in a manner similar to that used in the recently published Cost Recovery Rule (RIN1010-AD16, 70 FR 12626). Are there alternative ways to determine fair and equitable fees? (Answer: Specific details on how any fees are to be determined should be made available for public review and comment. The referenced Cost Recovery Rule did not detail the components of the cost recovery methodology in a manner sufficient to allow interested parties to understand and comment on the cost recovery methodology.[3])

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[1] *Mobil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 607 (2000) (quoting *United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996)).

[2] *Id.* at 616.

[3] The Cost Recovery Rule contained a description of factors considered to determine the costs to be recovered that was too vague to provide an understanding of the methodology used. *See* 70 Fed. Reg. at 12,627 (Mar. 15, 2005) ("We considered various factors in determining the proposed fee amounts. These factors included actual costs, the monetary worth of the services to the applicant, and whether the services provide a benefit to the general public.")

3. MMS may have a large cost differences associated with issuing permits and reviewing plans in the different regions (GOM, Pacific, Alaska); should the fee be uniform nationwide or vary by region? (Answer: While we reiterate that Chevron opposes the imposition of any fees to recover the costs described, in the event that such fees are imposed it seems that the logic of cost recovery dictates that different fees be charged in different regions because costs may vary by region.)

Conclusion

It is believed charging fees to process mandatory applications and permits is excessive considering the bonus, rentals and potential royalties lessees pay for the leases they acquire. It is our recommendation MMS not proceed with the rulemaking contemplated in the advanced notice and continue processing mandatory application and permits as it has in the past.

Should MMS believe the cost recovery advanced notice of proposed rulemaking is in response to anticipated MMS operating budget reductions, it is recommended MMS re-evaluate many of its historical processes and attempt to identify inefficiencies which if modified could produce cost savings. Streamlining more of its traditional processes may remove unnecessary costs currently being incurred by MMS. MMS' e-gov initiative is a good example of the effort MMS is making in streamlining its processes. Until e-gov is fully functional, the actual cost savings associated with this initiative will not be fully understood. Eliminating inefficiencies should be the first step in identifying cost savings.

We again wish to express our appreciation at being given the opportunity to comment on the advanced proposed notice of rulemaking. Should there be any questions regarding our comments, please do not hesitate to contact me.

Yours truly,

Chevron U.S.A. Inc.

J. Keith Couvillion